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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 1171 OF 2023

Sukhdeo Mahendrasing Rathod

Age : 24 years R/o. Phalke Vasti, Moi

Tal. Khed, Dist : Pune (Yerwada) Central Prison,

Pune

... Petitioner

Versus

1. Commissioner of Police

Pimpri Chinchwad

2. The State of Maharashtra

Through Addl. Chief Secretary to

Government of Maharashtra,

Mantralaya, Home Department

Mantralaya, Mumbai

3. The Superintendent

Yerwada Central Prison, Pune

... Respondents

Ms. Jayshree Tripathi for the Petitioner.

Mr. J. P. Yagnik, APP for the State.

CORAM : REVATI MOHITE DERE &

GAURI GODSE, JJ.

DATE : 6th JULY 2023

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JUDGMENT: (PER: GAURI GODSE, J.)

1. By this Petition, the Petitioner prays for quashing and setting aside the order of detention bearing No. PCB/DET/35/2023, Pimpri Chinchwad, dated 25th February 2023, issued by Respondent No.1-the Commissioner of Police, Pimpri Chinchwad, under Section 3 of The Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers, Drug-Offenders, Dangerous Persons, Video Pirates, Sand Smugglers and Persons Engaged in Black-Marketing of Essential Commodities Act, 1981 (hereinafter referred to as '**MPDA Act**').

2. Perusal of the detention order shows that the Detaining Authority has relied upon two criminal cases registered against the Petitioner; on 8th December 2022 vide C.R. No. 1872 of 2022 for alleged offence punishable under section 65(k)(f) of the Maharashtra Prohibition Act 1949 and C.R. registered on 16th December 2022 vide C.R. No. 1913 of 2022 for the alleged offence punishable under section 65(k)(c) of the Maharashtra Prohibition Act, 1949.

3. The detention order indicates that the Detaining Authority has relied upon the aforesaid two C.R.s registered against the Petitioner as well as the in-camera statement of the four witnesses for arriving at a subjective satisfaction that the Petitioner is required to be detained for maintaining public order.

4. The learned counsel for the Petitioner has raised various grounds of objection; however, has pressed into service ground raised in clause (c) of paragraph 5, which reads as under :

(c) The petitioner says and submits that a representation of the petitioner dated 04.03.2023 was sent to the Superintendent Yerwada Central Prison, Pune for further sending it to the State Government for expeditious consideration, revoke and communication. The petitioner says and submits that so far no communication has been received from the State Government as regards to the consideration of the said representation by the State Government, thereby the State Government has delayed in considering the representation of the petitioner expeditiously and diligently and

communicating the result to the petitioner. All respective authorities are called upon to explain the delay, if any, occurred from the date of representation till today to the satisfaction of this Hon'ble Court failing which the continued detention will be held as illegal and bad in law, liable to be quashed and set aside.

5. Learned counsel for the Petitioner submitted that the representation dated 3rd/4th March 2023 was sent to Respondent No. 2 through Advocate, and the jail authorities received the same on 8th March 2023. She submitted that the signature of the Petitioner was taken on the said representation on 8th March 2023, and the same was forwarded to Respondent No. 2-State Government on the same day. The State Government received the said representation on 9th March 2023. The learned counsel further submitted that the representation was rejected by Respondent No. 2 on 26th April 2023. Learned counsel for the Petitioner thus submitted that the delay in rejecting the Petitioner's representation has vitiated the order of detention, and the same has rendered the Petitioner's detention illegal and impermissible.

She further submitted that Respondent No. 2 has not given any explanation for explaining the delay that occurred in deciding the representation. She therefore submitted that the detention order is required to be set aside, and the Petitioner is required to be released forthwith.

6. Learned APP relied upon the affidavit dated 17th May 2023 of Mr. Vinoy Kumar Choubey, Commissioner of Police, Pimpri Chinchwad, an affidavit dated 14th June 2023 of Mr. Shivshankar B.Patil on behalf of the jail authorities-Respondent No. 3 and affidavit dated 14th June 2023 of Mr. Anil Eknath Kulkarni, Joint Secretary, Government of Maharashtra, Home Department – Respondent No. 2.

7. Learned APP submitted that in the affidavit, Respondent No. 2 has explained that the remarks of the Detaining Authority were received on 21st April 2023 vide letter dated 21st March 2023. He submitted that the affidavit further explains that the concerned Assistant Section Officer submitted the file containing the remarks of the Detaining Authority along with the representation of the Petitioner

to the Section Officer on 21st April 2023. He further submitted that 22nd April 2023 (Saturday) and 23rd April 2023 (Sunday) being holidays; the Section Officer endorsed receipt of the representation on 24th April 2023 and forwarded the same to the Joint Secretary (In-Charge) on the same day. Learned APP thus submitted that the Joint Secretary (In-Charge) endorsed it on 25th April 2023 and forwarded it to the Additional Chief Secretary(Home) on the same day. He then submitted that after considering the remarks of the Detaining Authority, Respondent No. 2 immediately decided the representation and rejected the same on 26th April 2023.

8. Learned APP, by relying upon affidavit on behalf of the Detaining Authority, submitted that the Detaining Authority has referred to the steps taken for preparing the para-wise remarks and has submitted that on 16th March 2023, the same was forwarded to the DCP, Crime Officer for perusal. He submitted that the affidavit further explains that on 18th March 2023 and 19th March 2023 being Saturday and Sunday, para-wise remarks were forwarded to the office of Respondent

No. 1 on 21st March 2023, and the para-wise reply was prepared and submitted to the State Government by letter dated 22nd March 2023. The affidavit further states that during the said period, the State Assembly session was going on, and preparation of written exams for police recruitment was also going on. Hence the Detaining Authority has explained in the affidavit that due to the aforesaid reasons, the Detaining Authority was required to perform certain work on a priority basis, and hence the Detaining Authority was busy due to an unusual situation. However, the Detaining Authority has communicated the para-wise remarks as soon as possible.

9. Learned APP, thus relying upon the aforesaid affidavits, has submitted that the delay in deciding the representation is properly explained in the aforesaid affidavits, and hence there is no substance in the ground raised by the Petitioner that the detention order is vitiated on the ground of delay. Learned APP thus supported the order of detention and submitted that by accepting the explanation given in the aforesaid affidavit, the detention order be confirmed.

10. Learned counsel for the Petitioner has relied upon the decision of the Supreme Court in the case of *Harish Pahwa Vs. State of U.P. and Others*¹ and decision of this court in the case of *Riyaz Ahmed Batatawala Vs. The State of Maharashtra and Others*². By relying upon the said decisions, the learned counsel for the Petitioner submitted that the consistent view is taken by this Court as well as the Hon'ble Supreme Court that delays in deciding the representation results in continued detention to be illegal and impermissible.

11. We have considered the submissions made on behalf of all the parties. It is not in dispute that the representation of the Petitioner through his Advocate was received by the Jail Authorities on 8th March 2023 and the signature of the Petitioner was also taken on the same day, and the representation was forwarded to the State Government on the same day. It is further also not disputed that the State Government received the representation on 9th March 2023. Affidavit on behalf of Respondent No. 2 – State Government has sought to explain that the para-wise remarks of the Detaining Authority were received by the

1 (1981) 2 SCC 710

2 2015(2) Bom CR599 (Cri)

State Government on 21st April 2023 vide letter dated 21st March 2023.

12. The affidavit of the Detaining Authority does not dispute that the para-wise remarks were prepared for forwarding the same along with a letter dated 21st March 2023. The affidavit filed on behalf of the Detaining Authority does not explain as to the delay in sending the para-wise remarks, vide letter dated 21st March 2023, the affidavit of Respondent no. 2 – State Government explains the delay in deciding the representation only on the ground of delay in receiving the para-wise remarks.

13. In the aforesaid facts, it is necessary to refer to the decision of the Hon'ble Supreme Court in the case of *Harish Pahwa* where it was held that delay in considering representation caused in soliciting comments from other departments and allowing the representation to lie unattended would render the detention unconstitutional. The Hon'ble Supreme Court, in the case of *Harish Pahwa*, in paragraph 5, has held as under:

“5. We may make it clear, as we have done on numerous earlier occasions, that this Court does not look with equanimity upon such delays when the liberty of a person is concerned.....”

14. This Hon’ble Court, in the case of ***Riyaz Ahmed Batatawala*** has relied upon the principles laid down by the Hon’ble Supreme Court in the case of ***Harish Pahwa*** and held that the delay in submitting the para-wise comments, when not explained, results in the continued detention illegal and has thus held that the order of preventive detention would stand vitiated. The facts of the aforesaid case are similar to the facts of the present case. In the present case, representation is not decided in time, only for want of para-wise comments from the detaining authorities. In the present case, there is a delay of more than one and a half months in deciding the representation.

15. After perusing the undisputed dates as aforesaid, we find that after representation was forwarded to the State Government, there was a delay by the detaining authority in preparing and sending para-wise

remarks. The case of Respondent No. 2 is that the delay in receiving para-wise remarks has resulted in the delay in deciding the representation of the Petitioner. Considering the aforesaid facts, we find that there is no satisfactory explanation given for keeping the representation pending. In our view keeping the representation pending for want of para-wise remarks from Detaining Authority will render the detention order unconstitutional. This unexplained delay in deciding the representation has resulted in the continued detention of the Petitioner, illegal and impermissible. Thus, there is a violation of the Petitioner's right under Article 22 (5) of the Constitution of India.

16. For the reasons stated above, Petition is allowed by passing following order:

i) Rule is made absolute in terms of prayer clause (b), which reads thus:

(b) The order of Detention bearing No. PCB/DET/35/2023, Pimpri Chinchwad, dated 25.02.2023 issued under under Section 3 of

M.P.D.A. Act 1981 by the Respondent No. 1 be
quashed and set aside and on quashing the same
the Petitioner be ordered for release forthwith;

ii) The Petitioner be released forthwith, if not required
in any other case.

iii) The Petition is allowed.

All concerned to act on the authenticated copy of this order.

GAURI GODSE, J.

REVATI MOHITE DERE, J.